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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CONNECT TO COMMUNICATIONS,
INC.,

Plaintiff and Respondent,

v.

CITY OF GLENDALE,

Defendant and Appellant.

B203376

(Los Angeles County
Super. Ct. No. EC042453)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Alan S. Kalkin and Laura A. Matz, Judges. Affirmed.

Scott H. Howard, City Attorney, and Albert I. Aldesco, Assistant City
Attorney, for Defendant and Appellant.

Law Offices of Akop Baltayan, Richard M. Foster and Vip Bhola for
Plaintiff and Respondent.

INTRODUCTION

Connect to Communications (Connect) sued the City of Glendale (the City) for inverse condemnation after sewage overflow from a public sewer main damaged Connect's premises. Following a bench trial, the court found the City liable. A jury subsequently awarded damages to Connect. The City's appeal essentially challenges the sufficiency of the evidence to sustain the trial court's finding that Connect established the predicates for recovering in inverse condemnation. We affirm.

STATEMENT OF FACTS

1. The Evidence

During the evening of July 22, 2005, a blockage occurred in the sewer main near Connect's property at 555 Riverdale Drive. The City installed, maintains and owns the sewer main. This particular line had been replaced in March 2000. Sewage overflowed from the sewer main into Connect's business premises, causing substantial damage and rendering the business inoperable for a period of time.

While the City conceded Connect had done nothing to cause the stoppage, the parties disputed the reason(s) for the stoppage. On that issue of causation, the following evidence was presented.

Within an hour of the stoppage, two of the City's on-duty waste workers responded to the scene and, using a high-power hose, removed an obstruction in the sewer main. One of the workers observed an object resembling a "laminated board" emerge from the sewer line into the manhole area. When the work crew, using a "chopper pole," attempted to grab the object, the "severely degraded" object fell into several pieces and continued down stream, never to be recovered. One of the workers described the "laminated board" as being approximately three

feet long and five inches wide. Another described it as “drywall board” or “particle board.” The superintendent of the work crew concluded that the object was “definitely a foreign object as far as sewers go” because the “sewer system is designed for household waste.”¹ He testified that this was the sole occurrence of blockage by a foreign object in three and a half years. He conceded that it was an inherent risk that individuals would “dump foreign matter into the sewers.” In a similar vein, Connect’s expert witness testified that the dumping of foreign matter into a sewer system was an inherent risk of maintaining the system.² He explained that 10 percent of stoppages are caused by vandalism such as dumping of foreign matter into the system; 45 percent of stoppages are caused by roots; and another 45 percent of stoppages are caused by grease.

Three days after the stoppage, another waste water maintenance crew conducted a “TV inspection” of the segment of the sewer system where the backup had occurred. The inspection revealed “heavy” root intrusion protruding from the four-inch lateral line (the line that connects an individual property to the sewer system) into the eight-inch sewer main.³ Connect’s expert testified that an inherent risk of a sewer system is root intrusion causing blockage. In his opinion, the roots were “the initial cause of a partial blockage”; the blockage was “more likely than

¹ Section 13.40.250 of the City’s municipal code prohibits disposal of foreign material in the sewer system.

² In regard to the laminate board, Connect’s expert testified that “frequently around construction sites things get left in sewers or somehow things get in there.”

³ Connect’s expert testified that not all of the roots which could have caused the stoppage would be present at the time of the inspection because the City’s use of a high-power hose on the day of the stoppage to clear obstructions would have removed most of them.

not . . . associated with those roots”; and it was “very likely that the piece of laminate was hung up on [the roots] and contributed to the blockage.” In other words, he believed that the blockage was caused by “a combination of the roots and the laminate.” He believed that “the roots started it” and then the “laminate hung up on it and contributed” although “there were probably other things that also hung up on it, the so-called beaver dam effect.”⁴ He opined that the blockage had been building up over time because the “roots took a good while to grow in there, and the deteriorated state of the laminate” suggested it had been in the sewer for awhile.

The City follows a preventative maintenance program to ensure its sewer system functions properly. The City had conducted a routine cleaning of the sewer main in the 500 block of Riverdale Drive on February 4, 2005, five and a half months before the stoppage. The process involved use of a regular nozzle to clean the sewer main and to shoot pressurized water to dislodge debris. The City’s employee who conducted the cleaning did not observe any problem, including root blockage. His impression was that “it was a pretty good line.” He did not recommend any further inspection or evaluation of the sewer main.

2. The Trial Court’s Ruling and the Jury’s Verdict

The trial court issued the following statement of decision.

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The City’s waste water maintenance superintendent agreed “that root intrusion can cause other material, the beaver dam effect . . . to collect on that root intrusion . . . and if material collects there, . . . that could slow the flow of the sewage.” In addition, one of the City’s waste water workers who had helped to break the stoppage on July 22 agreed that the presence of growing roots would narrow the sewer main, causing “things [to] collect there and buildup like a beaver dam.”

“1. Defendant City of Glendale (City) deliberately designed, constructed, owned, maintained, and controlled public improvements (works) in the form of city sewage water lines.

“2. *Defendant’s city sewage water lines have an inherent risk of being clogged and becoming blocked.*

“3. On or about July 22, 2005 the aforementioned City sewage water lines became clogged and became blocked.

“4. *Roots, that had intruded the defendant’s sewer lines from a lateral line, were a substantial cause of the blockage.*

“5. There was no evidence that there was vandalism.^[5]

“6. As a result of said blockage, sewage waters backed up into [Connect’s] premises located at 555 Riverdale Dr., Suite A, Glendale, CA 91204, causing substantial damages to [Connect’s] premises, business, and personal property.

“7. The foregoing occurrence directly and legally resulted in the ‘taking’ of [Connect’s] property by the City for public use. The ‘taking’ of [the] property deprived [Connect] of the use and enjoyment of its property.

“8. California Constitution, Article I, § 19 prohibits private property from being taken or damaged for public use without just compensation to the owner.

⁵

This finding responded to the City’s unsupported claim, made during its closing argument, that the laminate was in the sewer main as result of “an illegal act . . . an act of vandalism.” At that point, the trial court stated: “There is no proof of vandalism. No one was arrested for that. *There is no proof how that got in there.* You can assume it’s a crime, but there was no perpetrator here. We don’t know how that got there. [¶] . . . So I don’t want the argument that someone threw it there. I disagree with the argument. We don’t know that.” (Italics added.) The City’s counsel replied: “Right, Your Honor. It ended up there somehow.”

“9. [Connect] has proven its cause of action of inverse condemnation against Defendant City of Glendale.” (Italics added.)

After the trial court rendered its decision on liability, a jury trial was held to determine damages. The jury awarded Connect \$31,404.78 as “just compensation.” The City appeals.

DISCUSSION

The City’s appeal, although couched in various terms, essentially contends that substantial evidence does not support the trial court’s finding that its maintenance of the sewer system was the proximate cause of Connect’s injuries. We are not persuaded.⁶

Article I, section 19 of the California Constitution provides that property may not be taken or damaged for public use without just compensation to the owner. This constitutional provision creates the basis for an action for inverse condemnation so that a property owner can seek compensation from a public entity for “any actual physical injury to real property proximately caused by [a public] improvement as deliberately designed and constructed . . . whether foreseeable or

⁶ In regard to the standard of review, the City urges that “in the instant case, wherein the decisive facts are largely undisputed, and the question on appeal involves the application [of] a constitutional provision to largely undisputed facts, deference to the trial court is not warranted and the appellate court can decide this matter de novo.” We disagree. The parties’ closing arguments to the trial court indicate that they sharply disputed the evidence about the cause of the blockage, each giving different weight to the root invasion and the laminate board. The trial court, as set forth in its statement of decision, resolved that issue in favor of Connect by finding that the roots were a substantial cause of the blockage. We therefore review the trial court’s findings under the deferential substantial evidence standard of review. (*SFPP v. Burlington Northern & Santa Fe Ry. Co.* (2004) 121 Cal.App.4th 452, 462 [“The substantial evidence standard applies to both express and implied findings of fact made by the superior court in its statement of decision rendered after a nonjury trial.”].)

not.” (*Albers v. County of Los Angeles* (1965) 62 Cal.2d 250, 263-264.) “Inverse condemnation lies where damages are caused by the deliberate design or construction of the public work; but the cause of action is distinguished from, and cannot be predicated on, general tort liability or a claim of negligence in the maintenance of a public improvement. [Citations.] But damage caused by the public improvement as deliberately conceived, altered, or maintained may be recovered. [Citation.]” (*California State Automobile Assn. v. City of Palo Alto* (2006) 138 Cal.App.4th 474, 479 (CSAA).) Thus, to prevail upon its inverse condemnation claim, Connect was required to establish: (1) Connect owned the real property; (2) Connect’s property was damaged by the sewage backup; (2) the City’s sewer system was a public project; and (4) the property damage was proximately caused by the sewer system as deliberately designed and constructed. (*Id.* at p. 480.) The issue in this case revolves around the fourth element: proximate cause.

For purposes of inverse condemnation, proximate cause is established if the plaintiff can prove “‘a substantial cause-and-effect relationship excluding the probability that other forces *alone* produced the injury.’” (*Belair v. Riverside County Flood Control Dist.* (1988) 47 Cal.3d 550, 559 (*Belair*).) “Even where an independent force contributes to the injury, the public improvement remains a substantial concurrent cause if ‘the injury occurred in substantial part because the improvement failed to function as it was intended.’ The public improvement is a substantial cause unless ‘the damage would have occurred even if the project had operated perfectly.’ A public improvement is a ‘substantial concurring cause’ if other forces alone would not have caused the damage and the public improvement

failed to function as intended.” (CSAA, *supra*, 138 Cal.App.4th at p. 481, quoting from *Belair*; citations omitted.)

The facts of CSAA, *supra*, are instructive in deciding whether the record supports the trial court’s (implicit) finding of proximate cause. In CSAA, sewage backup from a city line damaged a private residence. At trial, the plaintiff presented evidence of three potential causes for the backup: (1) tree roots had invaded the sewer main; (2) the sewer main was on an inadequate slope to effectively carry the sewage away from the home; and (3) the presence of standing water filling one half of the sewer main. (CSAA, *supra*, 138 Cal.App.4th at pp. 478 & 482.) The city presented evidence about its maintenance program and established that the sewer main in question had been hydroflushed (a process which would remove tree roots) a year and a half before the backup. (*Id.* at p. 478.) In addition, the city established that there were no prior or subsequent sewer overflows into homes on the street in question. (*Ibid.*)

The trial court was not persuaded by the plaintiff’s evidence for various reasons. (*Id.* at p. 482.) In addition, the trial court found that the city had “a proactive approach to maintenance that . . . did not contribute to the sewage backup.” (*Ibid.*) It found that although the sewage backup was caused by a blockage in the sewer main, the plaintiff had failed to establish how or why the blockage in the main sewer had occurred. (*Ibid.*)

The plaintiff appealed and the appellate court reversed. It explained:

“The trial court’s conclusion that [the plaintiff] failed to establish ‘how or why’ the blockage occurred was clearly erroneous, because the court was focusing only on *which* of the three potential factors may have caused the injury, rather than whether ‘*the [public] improvement failed to function as it was in intended . . .*,’ as stated in *Belair, supra*, 47 Cal.3d at page 560 (italics added). Here, by finding that the blockage occurred in the main, and the blockage caused sewage to back up into the . . . home, the trial court impliedly found

that the public improvement failed to function as intended. Under the rationale of *Belair*, . . . the City should be liable under inverse condemnation.

“In addition, by requiring [the plaintiff] to show ‘how and why’ the blockage occurred, the trial court applied a higher standard of proof to its claim of inverse condemnation, requiring [the plaintiff] to prove tortious conduct on the part of the City. In citing the fact that the sewer main along [the street] had no history of sewage backups over 40 years it was in existence, and the fact that the City had a regular system of hydroflushing every two years that showed no history of tree root problems, the trial court was evaluating whether the City acted *reasonably* in the operation of its sanitary system or sewer system. However, whether or not the City acted reasonably or whether or not the [this particular] sewage backup was foreseeable is completely irrelevant in determining if the City is liable under a theory of inverse condemnation.

“We believe that where, as here, there were three substantial factors in causing the sewage backup, namely, tree roots invading the porous clay pipe of the sewer main, inadequate slope, and standing water in the main, the burden would shift to the public entity to produce evidence that would show that other forces alone produced the injury.

“Any other result would have the effect of making the proof bar so high that a homeowner could *never* prevail against a city in a case such as this. . . .

“We do not mean to say, as [the plaintiff] urges, the City would be ‘strictly liable for all property damage resulting from the blockage’ But here, where the new, nonporous lateral pipe installed by the homeowner was conclusively shown *not* to be the source of the blockage, it was error for the trial court to deem the proof of causation insufficient. The blockage occurred on City land and in piping strictly under the control of the City.

“Our discussion should not be taken as converting an inverse condemnation claim into a solely strict liability concept. The homeowner here had the duty to demonstrate the actual cause of the

damage to him. He did that. In finding the proof of causation insufficient because of a failure to establish the ‘how and why’ of the blockage, the trial court asked for too much. In order to satisfy such a standard of proof, one would have to prove with particularity the actual mechanism of the backup. But our Constitution does not require that. It only requires proof of a substantial cause of the damage, indeed as was said by our Supreme Court in *Belair*, “‘a substantial’ cause-and-effect relationship which excludes the probability that other forces *alone* produced the injury.’” (*Belair, supra*, 47 Cal.3d at p. 559.) In this case, there was a substantial cause and effect relationship between factors entirely within the City’s control, namely, tree roots, slope and standing water in the main that contributed to the backup; there is no need to distinguish among them to specifically determine ‘how and why’ the blockage occurred.” (*CSAA, supra*, 138 Cal.App.4th at pp. 483-484.)

By a parity of reasoning, the trial court’s decision in this case rests upon solid ground. The evidence established that roots had invaded the sewer main, creating a blockage which backed up sewage into Connect’s property.⁷ As the trial court found, the blockage caused by the roots (a factor entirely within the City’s

⁷ Noting that Glendale Municipal Code section 13.40.040 provides that “[a]ll house connections, including the wye or saddle at the sewer main, shall be maintained at the expense of the property owner,” the City urges that because the roots grew from the lateral line into the sewer main, it was not responsible for the blockage ultimately caused by that invasion. However, the City’s waste water maintenance superintendent testified that this requirement was sometimes overlooked (the City had cleaned at least one lateral line connected to a private residence). Regardless, the City’s argument falls short because it is undisputed that the City owns and controls the sewer main into which the roots intruded. Consequently, the origin of the roots (from the ground into the lateral line and then into the sewer main versus from the ground directly into the sewer main) is not particularly relevant.

control) was a substantial cause of the blockage.⁸ Because the sewer system failed to function as intended, it was a substantial cause of Connect's injuries. To the extent the laminate board constituted an additional cause, its presence in the sewer main was not attributable to anything Connect had done. Further, the evidence excluded the probability that the laminate board by itself would have caused the blockage because without the presence of the roots, the board would not have been stuck in the sewer main.

To defeat this conclusion, City argues that it cannot be liable because the blockage did not result from a deliberate act by the City relating to the design, construction or maintenance of the sewer system but, instead, was caused by the roots and laminate board, neither of which, according to the City, "constitute a municipal instrumentality." This approach misses the mark. "[T]he deliberateness requirement is satisfied by a public improvement that as designed and constructed presents inherent risks of damage to private property, and the inherent risks materialize and cause damage." (*Pacific Bell v. City of San Diego* (2000) 81 Cal.App.4th 596, 607.) As Connect's expert testified, an inherent risk of a sewer system is blockage caused by roots or other foreign material in the sewer main. That is exactly what happened here. Because of the roots, the City's sewer system did not take and dispose of waste material as it should have but, instead, caused the waste to backup and enter onto Connect's property. Thus, liability has been established because the public "improvement failed to function as it was intended." (*Belair, supra*, 47 Cal.3d at p. 560.)

⁸ To a large extent, the City ignores this finding by focusing on the laminate which it claims was placed in the sewer through an act of vandalism over which it (the City) had no control. This argument is not persuasive. The trial court found that the roots were a substantial cause of the blockage (a finding supported by substantial evidence) and that there was no evidence of vandalism (a finding likewise supported by the record).

Further, the City’s argument, particularly its reliance upon the evidence about its maintenance of the sewer system, improperly suggests that, contrary to precedent, there must be some showing of fault by the City in regard to its design or maintenance of the sewer system before a property owner can recover. The opposite is true. Connect could not and did not claim that the City was liable for inverse condemnation because it had failed to exercise due care. (See, e.g., *Customer Co. v. City of Sacramento* (1995) 10 Cal.4th 368, 381-382 [inverse condemnation does not compensate for damages caused by negligent conduct of a public entity or its employees].) Instead, it properly proceeded on the theory that the “damaging of [its] property is sufficiently connected with ‘public use’ as required by the Constitution, if the injury is a result of dangers inherent in the construction of the public improvement as distinguished from dangers arising from the negligent operation of the improvement.” (*House v. L. A. County Flood Control Dist.* (1944) 25 Cal.2d 384, 396.) Connect urged, and the trial court found, that a danger inherent to the construction of a sewer line is that the line will become clogged and blocked by roots or other foreign material (the exact situation which materialized and caused damage to Connect’s property) and on that basis the City was liable to Connect for its damages. This conclusion is consistent with the fundamental policy underlying inverse condemnation of distributing the costs of the public improvement (the sewer system) among those who benefit from it rather than imposing a disproportionate burden upon the party (here, Connect) damaged by the public entity’s operation of the improvement. (*Holtz v. Superior Court* (1970) 3 Cal.3d 296, 303; *Pacific Bell v. City of San Diego*, *supra*, 81 Cal.App.4th at p. 607.)

DISPOSITION

The judgment is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.